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**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

**RHONDA M. ULIBARRI
AKA RHONDA M. ULIBARRI
21818 Esaws Road
Apple Valley, CA 92307**

Registered Nurse License No. 600526

Respondent.

Case No. 2013-198

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about September 20, 2012, Complainant Louise R. Bailey, M.Ed., R.N., in her official capacity as the Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs, filed Accusation No. 2013-198 against Rhonda M. Ulibarri also known as Rhonda M. Ulibarri (Respondent) before the Board of Registered Nursing. (Accusation attached as Exhibit A.)

2. On or about June 12, 2002, the Board of Registered Nursing (Board) issued Registered Nurse License No. 600526 to Respondent. The Registered Nurse License was in full force and effect at all times relevant to the charges in the Accusation No. 2013-198, expired on April 30, 2012, and has not been renewed.

1 9. Pursuant to its authority under Government Code section 11520, the Board finds
2 Respondent is in default. The Board will take action without further hearing and, based on the
3 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
4 taking official notice of all the investigatory reports, exhibits and statements contained therein on
5 file at the Board's offices regarding the allegations contained in Accusation No. 2013-198, finds
6 that the charges and allegations in Accusation No. 2013-198, are separately and severally, found
7 to be true and correct by clear and convincing evidence.

8 10. Taking official notice of its own internal records, pursuant to Business and
9 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
10 and Enforcement is \$3,120.00 as of November 14, 2012.

11 DETERMINATION OF ISSUES

12 1. Based on the foregoing findings of fact, Respondent Rhonda Ulibarri aka Rhonda M.
13 Ulibarri has subjected her Registered Nurse License No. 600526 to discipline.

14 2. The agency has jurisdiction to adjudicate this case by default.

15 3. The Board of Registered Nursing is authorized to revoke Respondent's Registered
16 Nurse License based upon the following violations alleged in the Accusation which are supported
17 by the evidence contained in the Default Decision Evidence Packet in this case:

18 a. Respondent is subject to disciplinary action under Business and Professions Code
19 section 2762, subdivision (b), on the grounds of unprofessional conduct, in that, Respondent has
20 used controlled substances to an extent or in a manner dangerous to herself or any other person or
21 the public, or to the extent that such use impairs her ability to conduct with safety the practice
22 authorized by her license, by reason of the following facts:

23 (1) On or about January 26, 2012, while on duty as a registered nurse at the
24 Arrowhead Regional Medical Center, Respondent removed two (2) vials of 50 ml of Benadryl
25 from the Pyxis system (a computerized medication system) without a physician order. When
26 questioned by a managing nurse about the diverted medications, she could not provide a
27 reasonable explanation. Respondent appeared to be under the influence as demonstrated by
28 Respondent's slurred speech, loss of memory and irrational responses when questioned.

1 Respondent was asked to submit to a drug screen which she declined to provide. Respondent
2 resigned from Arrowhead Regional Medical Center a few days later while the matter was under
3 investigation.

4 (2) Thereafter, on or about May 23, 2012, following the Board's referral, Respondent
5 enrolled in the Board's Diversion program, administered by Maximus. During an intake
6 interview on May 10, 2012, Respondent admitted to Maximus counselors to abusing opiates for
7 the last seven (7) years. She admitted to using Norco, Ativan and Valium. She also admitted to
8 using Norco up until, and including, August 5, 2011. Respondent also admitted that she was
9 hospitalized on or about May 14, 2011 for detoxification of Valium. On or about June 4, 2012,
10 Respondent missed a clinical assessment. On that same date, when a staff member of Maximus
11 spoke with Respondent on the phone, Respondent had slurred speech, was incoherent, and
12 admitted to use of Valium up to and including June 2, 2012.

13 b. Respondent is also subject to disciplinary action under Business and Professions
14 Code section 2761, subdivision (a), on grounds of unprofessional conduct, as defined in Business
15 and Professions Code section 2762, subdivisions (a), for violating Health and Safety Code
16 sections 11170, 11171 and 11173, subdivision (a), and/or 11350 subdivision (a), by reason of the
17 following:

18 (1) On or about January 26, 2012, while on duty as a registered nurse at the
19 Arrowhead Regional Medical Center, Respondent unlawfully obtained two (2) vials of 50 ml of
20 Benadryl from the Pyxis system without a doctor's order, as more fully set forth in paragraph
21 3a(1) above.

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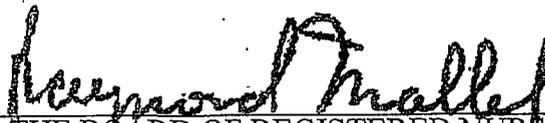
ORDER

1
2 IT IS SO ORDERED that Registered Nurse License No. 600526, heretofore issued to
3 Respondent Rhonda Ulibarri, also known as Rhonda M. Ulibarri, is revoked.

4 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
5 written motion requesting that the Decision be vacated and stating the grounds relied on within
6 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
7 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

8 This Decision shall become effective on MAY 2, 2013.

9 It is so ORDERED APRIL 2, 2013

10
11 
12 FOR THE BOARD OF REGISTERED NURSING
13 DEPARTMENT OF CONSUMER AFFAIRS

14 51192478 2.DOC
15 DOJ Matter ID:LA2012507397

16 Attachment:
17 Exhibit A: Accusation
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Exhibit A

Accusation

1 KAMALA D. HARRIS
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2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 CRISTINA FELIX
Deputy Attorney General
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300 So. Spring Street, Suite 1702
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Telephone: (213) 897-2455
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E-mail: Cristina.Felix@doj.ca.gov
7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. *2013-198*

13 **RHONDA ULIBARRI**
14 **AKA RHONDA M. ULIBARRI**
21818 Esaws Road
Apple Valley, CA 92307

A C C U S A T I O N

15 **Registered Nurse License No. 600526**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
22 Consumer Affairs.

23 2. On or about June 12, 2002, the Board of Registered Nursing issued Registered Nurse
24 License Number 600526 to Rhonda Ulibarri also known as Rhonda M. Ulibarri (Respondent).
25 The Registered Nurse License was in full force and effect at all times relevant to the charges
26 brought herein and expired on April 30, 2012, and has not been renewed.

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1 **JURISDICTION**

2 3. This Accusation is brought before the Board of Registered Nursing (Board),
3 Department of Consumer Affairs, under the authority of the following laws. All section
4 references are to the Business and Professions Code unless otherwise indicated.

5 **STATUTORY PROVISIONS**

6 4. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part,
7 that the Board may discipline any licensee, including a licensee holding a temporary or an
8 inactive license, for any reason provided in Article 3 (commencing with section 2750) of the
9 Nursing Practice Act.

10 5. Section 118, subdivision (b), of the Code provides that the
11 suspension/expiration/surrender/cancellation of a license shall not deprive the
12 Board/Registrar/Director of jurisdiction to proceed with a disciplinary action during the period
13 within which the license may be renewed, restored, reissued or reinstated.

14 6. Section 2764 of the Code provides, in pertinent part, that the expiration of a license
15 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
16 licensee or to render a decision imposing discipline on the license.

17 7. Section 2761 of the Code states:

18 "The board may take disciplinary action against a certified or licensed nurse or deny an
19 application for a certificate or license for any of the following:

20 (a) Unprofessional conduct, which includes, but is not limited to, the following:

21 (1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing
22 functions.

23 ...

24 (d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
25 violating of, or conspiring to violate any provision or term of this chapter [the Nursing Practice
26 Act] or regulations adopted pursuant to it.

27 ..."

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1 8. Section 2762 of the Code states:

2 "In addition to other acts constituting unprofessional conduct within the meaning of this
3 chapter [the Nursing Practice Act]; it is unprofessional conduct for a person licensed under this
4 chapter to do any of the following:

5 (a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed
6 physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or
7 administer to another, any controlled substance as defined in Division 10 (commencing with
8 Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as
9 defined in Section 4022.

10 (b) Use any controlled substance as defined in Division 10 (commencing with Section
11 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in
12 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
13 himself or herself, any other person, or the public or to the extent that such use impairs his or her
14 ability to conduct with safety to the public the practice authorized by his or her license.

15 ...

16 (c) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any
17 hospital, patient, or other record pertaining to the substances described in subdivision (a) of this
18 section."

19 9. Section 2770.11 of the Code states:

20 (a) Each registered nurse who requests participation in a diversion program shall agree
21 to cooperate with the rehabilitation program designed by the committee and approved by the
22 program manager. Any failure to comply with the provisions of rehabilitation program may
23 result in termination of the registered nurse's participation in a program. The name and license
24 number of a registered nurse who is terminated for any reason, other than successful completion,
25 shall be reported to the board's enforcement program.

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1 (b) If the program manager determines that a registered nurse, who is denied admission
2 into the program or terminated from the program, presents a threat to the public or his or her own
3 health and safety, the program manager shall report the name and license number, along with a
4 copy of all diversion records for that registered nurse, to the board's enforcement program. The
5 board may use any of the records it receives under this subdivision in any disciplinary
6 proceeding."

7 10. Health and Safety Code section 11170 states that no person shall prescribe,
8 administer, or furnish a controlled substance for himself.

9 11. Health and Safety Code Section 11171 provides:

10 "No person shall prescribe, administer, or furnish a controlled substance except under the
11 conditions and in the manner provided by this division."

12 12. Health and Safety Code Section 11173 provides:

13 "(a) No person shall obtain or attempt to obtain controlled substances, or procure or
14 attempt to procure the administration of or prescription for controlled substances, (1) by fraud,
15 deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact."

16 13. Health and Safety Code Section 11350 provides:

17 "(a) Except as otherwise provided in this division, every person who possesses (1) any
18 controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of
19 Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or
20 specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section
21 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic
22 drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian
23 licensed to practice in this state, shall be punished by imprisonment in the state prison."

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1 **COST RECOVERY**

2 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
3 administrative law judge to direct a licentiate found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case.

6 **DEFINITIONS**

7 15. **Ativan**, a brand name for Lorazepam, a benzodiazepine derivative, is a Schedule IV
8 controlled substance as designated by Health and Safety Code section 11057, subdivision (d)(16),
9 and is categorized as a dangerous drug pursuant to Business and Professions Code section 4022.

10 16. **Benadryl**, is the trade name for the drug Diphenhydramine, which is classified as an
11 antihistamine, sedative, Anti-Parkinson, Anaphylaxis. In 50 mg capsules or tablets this is a
12 prescription drug and considered a dangerous drug pursuant to Business and Professions Code
13 section 4022.

14 17. **Valium**, a trade name for the chemical substance diazepam, a Benzodiazepam
15 derivative, is a Schedule IV controlled substance as designated by Health and Safety Code section
16 11057(d)(9) and is categorized as a dangerous drug pursuant to Business and Professions Code
17 section 4022.

18 18. **Norco** and **Vicodin** are trade names for the narcotic substance hydrocodone or
19 dihydrocodeinone with the non-narcotic substance acetaminophen. They are Schedule III
20 controlled substances pursuant to Health and Safety Code section 11056(e)(4), and are dangerous
21 drugs within the meaning of Business and Professions Code section 4022.

22 **RESPONDENT'S TERMINATION FROM BOARD'S**
23 **DIVERSION PROGRAM AS A PUBLIC RISK**

24 19. On or about May 23, 2012, Respondent began participating in the Board's Diversion
25 program, administered by Maximus. Respondent agreed to cooperate with an outpatient
26 treatment program, including 12-step and support group requirements, and to abstain from
27 alcohol and all other mind-altering drugs, except as prescribed by a physician. Respondent was
28 also required to submit to drug screens to test for the presence of alcohol and/or drugs.

1 resigned from Arrowhead Regional Medical Center a few days later while the matter was under
2 investigation.

3 b. Thereafter, on or about May 23, 2012, following the Board's referral,
4 Respondent enrolled in the Board's Diversion program, administered by Maximus. During an
5 intake interview on May 10, 2012, Respondent admitted to Maximus counselors to abusing
6 opiates for the last seven (7) years. She admitted to using Norco, Ativan and Valium. She also
7 admitted to using Norco up until, and including, August 5, 2011. Respondent also admitted that
8 she was hospitalized on or about May 14, 2011 for detoxification of Valium. On or about June 4,
9 2012, Respondent missed a clinical assessment. On that same date, when a staff member of
10 Maximus spoke with Respondent on the phone, Respondent had slurred speech, was incoherent,
11 and admitted to use of Valium up to and including June 2, 2012.

12 SECOND CAUSE FOR DISCIPLINE

13 (Unlawfully Obtaining Controlled Substances)

14 22. Respondent is subject to disciplinary action under Business and Professions Code
15 section 2761, subdivision (a), on grounds of unprofessional conduct, as defined in Business and
16 Professions Code section 2762, subdivisions (a), for violating Health and Safety Code sections
17 11170, 11171 and 11173, subdivision (a), and/or 11350 subdivision (a), by reason of the
18 following:
19

20 a. On or about January 26, 2012, while on duty as a registered nurse at the Arrowhead
21 Regional Medical Center, Respondent unlawfully obtained two (2) vials of 50 ml of Benadryl
22 from the Pyxis system without a doctor's order, as more fully set forth in paragraph 21 above.

23 PRAYER

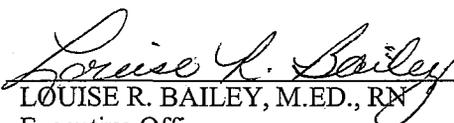
24 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
25 and that following the hearing, the Board of Registered Nursing issue a decision:

26 1. Revoking or suspending Registered Nurse License Number 600526, issued to Rhonda
27 Ulibarri also known as Rhonda M. Ulibarri;
28

1 2. Ordering Rhonda Ulibarri also known as Rhonda M. Ulibarri to pay the Board of
2 Registered Nursing the reasonable costs of the investigation and enforcement of this case,
3 pursuant to Business and Professions Code section 125.3;

4 3. Taking such other and further action as deemed necessary and proper.

5
6 DATED: September 20, 2012


LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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